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CITIGROUP, INC. and CITIBANK, N.A.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DANA GILBERT, on her behalf and all others similarly situated, ) CLASS ACTION  
)  
Plaintiff, ) Case No. CV-08-0385-SC  
)  
) *Action Filed: January 22, 2008*  
vs. )  
)  
CITIGROUP, INC., CITIBANK, N.A., ) DEFENDANTS CITIGROUP, INC.  
) AND CITIBANK, N.A.'S ANSWER TO  
) PLAINTIFF'S SECOND AMENDED  
Defendants. ) COMPLAINT

Defendants CITIGROUP, INC. (“Citigroup”) and CITIBANK, N.A. (“Citibank”)(collectively referred to as “Defendants”) respond to Plaintiff DANA GILBERT’s (“Plaintiff”) Second Amended Complaint on file herein (the “Complaint”) and admit, deny and allege as follows:

## INTRODUCTION

1. With respect to Paragraph 1, Defendants admit that Plaintiff is attempting to bring this action as a nationwide collective action. Other than as specifically admitted, Defendants deny the allegations contained in Paragraph 1.

Defendants deny that collective action treatment in this case is appropriate.

2. With respect to Paragraph 2, Defendants admit that Plaintiff is attempting to bring this action as a class action. Other than as specifically admitted, Defendants deny the allegations contained in Paragraph 2. Defendants deny that class action treatment in this case is appropriate.

3. With respect to Paragraph 3, Defendants lack sufficient information and belief to admit or deny the allegations of Paragraph 3, and on that basis deny those allegations.

## SUMMARY OF CLAIMS

4. With respect to Paragraph 4, Defendants admit that Plaintiff is attempting to bring this action as a nationwide collective action and purports to define a certain class and subclasses. Other than as specifically admitted, Defendants deny the allegations contained in Paragraph 4. Defendants deny that collective action or class action treatment in this case is appropriate.

5. With respect to Paragraph 5, Defendants admit that Plaintiff is attempting to bring this action as a class action and purports to define a certain class and subclasses. Other than as specifically admitted, Defendants deny the allegations contained in Paragraph 5. Defendants deny that collective action or class action treatment in this case is appropriate.

6. With respect to Paragraph 6, Defendants admit that Plaintiff has attempted to define the "Class" to include the "California Class" and the "Nationwide Collective Class" as she has otherwise defined those terms in Paragraphs 4 and 5. Defendants deny that collective action or class action treatment in this case is appropriate.

7. With respect to Paragraph 7, Defendants deny the allegations contained therein. Defendants deny that collective action treatment in this case is appropriate.

8. With respect to Paragraph 8, Defendants deny the allegations.

1 contained therein. Defendants deny that class action treatment in this case is  
2 appropriate.

3                   9.       With respect to Paragraph 9, Defendants deny the allegations  
4 contained therein. Defendants deny that collective action or class action treatment in  
5 this case is appropriate.

## **FACTUAL ALLEGATIONS**

7        10. With respect to Paragraph 10, Defendants state that Plaintiff has not  
8 defined the terms “inside salespeople” or “financial products.” In addition, based on the  
9 vague description provided by Plaintiff of the class, specifically the “the functional  
10 equivalent however titled,” Defendants lack sufficient information and belief to admit or  
11 deny the allegations related to those terms, and on that basis deny the allegations in  
12 Paragraph 10. Defendants deny that collective action or class action treatment in this  
13 case is appropriate.

14                   11. With respect to Paragraph 11, Defendants deny the allegations  
15 contained therein. Defendants deny that collective action or class action treatment in  
16 this case is appropriate.

17                   12. With respect to Paragraph 12, the statutes, regulations and wage  
18 orders speak for themselves. Plaintiff's shorthand statement of their requirements is  
19 incomplete. Defendants admit that non-exempt employees are eligible to receive  
20 overtime pay for overtime work as defined by state and federal laws. Except as  
21 specifically admitted or denied, Defendants deny the allegations contained in Paragraph  
22 12.

23                   13. With respect to Paragraph 13, the statutes, regulations and wage  
24 orders speak for themselves. Plaintiff's shorthand statement of their requirements is  
25 incomplete. Defendants deny the allegations contained therein.

26                   14. With respect to Paragraph 14, Defendants deny the allegations  
27 contained therein.

28 15. With respect to Paragraph 15, Defendants admit that Citibank

1 Business Banking Officers were, at times, compensated in part on a salary basis. Other  
2 than as specifically admitted, Defendants deny the allegations contained in Paragraph  
3 15.

4 16. With respect to Paragraph 16, Defendants deny the allegations  
5 contained therein.

6 17. With respect to Paragraph 17, Defendants deny the allegations  
7 contained therein.

8 18. With respect to Paragraph 18, Defendants deny the allegations  
9 contained therein.

10 19. With respect to Paragraph 19, Defendants deny the allegations  
11 contained therein.

12 20. With respect to Paragraph 20, Defendants deny the allegations  
13 contained therein.

14 21. With respect to Paragraph 20, Defendants deny the allegations  
15 contained therein.

16 22. With respect to Paragraph 22, it is unclear what Plaintiff means by  
17 the term "any specific degree." On that basis, Defendants lack sufficient information and  
18 belief to admit or deny the allegations of Paragraph 22, and on that basis deny those  
19 allegations.

20 23. With respect to Paragraph 23, Defendants admit that the FLSA and  
21 California law provide for certain exemptions to paying overtime. Other than as  
22 specifically admitted, Defendants deny the allegations contained in Paragraph 23.

23 24. With respect to Paragraph 24, Defendants state that Plaintiff has not  
24 defined the term "financial products." In addition, based on the vague description  
25 provided by Plaintiff of the class, including the "the functional equivalent however  
26 titled," Defendants lack sufficient information and belief to admit or deny the allegations  
27 in Paragraph 24. With respect to Plaintiff's characterization of the administrative  
28 exemption, the statutes, regulations and wage orders speak for themselves. Plaintiff's

1 shorthand statement of their requirements is incomplete. Defendants deny that  
2 collective action or class action treatment in this case is appropriate.

3       25. Based on the vague description provided by Plaintiff of the class,  
4 including the “the functional equivalent however titled” and the vagueness of the term  
5 “true commission pay plan,” Defendants lack sufficient information and belief to admit  
6 or deny the allegations of Paragraph 45, and on that basis deny the allegations therein.  
7 With respect to Plaintiff’s characterization of the commissioned sales exemption, the  
8 statutes, regulations and wage orders speak for themselves. Plaintiff’s shorthand  
9 statement of their requirements is incomplete.

10       26. With respect to Paragraph 26, Defendants deny the allegations  
11 contained therein. Defendants deny that collective action or class action treatment in  
12 this case is appropriate.

13       27. Defendants admit the allegations of Paragraph 27

14       28. With respect to Paragraph 28, Defendants deny the allegations  
15 contained therein.

16       29. With respect to Paragraph 29, Defendants deny the allegations  
17 contained therein. Defendants deny that collective action or class action treatment in  
18 this case is appropriate.

19       30. With respect to Paragraph 30, Defendants deny the allegations  
20 contained therein. Defendants deny that collective action or class action treatment in  
21 this case is appropriate.

22       31. With respect to Paragraph 31, Defendants deny the allegations  
23 contained therein.

24       32. With respect to the allegations of Paragraph 32, Defendants admit  
25 that information regarding compensation paid to Plaintiff by Citibank is available to  
26 Citibank. Defendants further admit that, for the time period that Plaintiff was an  
27 overtime-eligible employee, information regarding her daily hours worked is available to  
28 Citibank. Defendants lack sufficient information and belief to admit or deny the

remaining allegations of Paragraph 32, and on that basis deny those allegations.

2                   33. With respect to Paragraph 33, Defendants deny the allegations  
3 contained therein.

## **JURISDICTION AND VENUE**

34. With respect to Paragraph 34, Defendants admit that Plaintiff has alleged a claim pursuant to the Fair Labor Standards Act (“FLSA”) and that the Court has subject matter jurisdiction over the FLSA claim. Defendants lack sufficient information and belief to admit or deny the remaining allegations of Paragraph 34, and on that basis deny those allegations.

35. With respect to the allegations of Paragraph 35, Defendants lack sufficient information and belief to admit or deny those allegations, and on that basis deny those allegations.

36. With respect to the allegations of Paragraph 36, Defendants lack sufficient information and belief to admit or deny the allegations of Paragraph 36, and on that basis deny those allegations.

37. With respect to Paragraph 37, Defendants state that it consists of conclusions of law requiring no answer. To the extent that Paragraph 37 contains any factual averments, Defendants deny the allegations contained therein.

38. With respect to Paragraph 38, Defendants lack sufficient information and belief to admit or deny the allegations of Paragraph 38, and on that basis deny those allegations.

## PARTIES

39. With respect to the allegations of Paragraph 37, Defendants admit that Plaintiff was employed as a salaried Business Banking Officer for a certain time period during her employment with Citibank. Defendants deny that Plaintiff was not properly compensated for all hours worked. Except as specifically admitted or denied, Defendants lack sufficient information and belief to admit or deny the remaining allegations in this paragraph, and on that basis deny those allegations.

1           40. With respect to the allegations of Paragraph 40, Defendants admit  
 2 that Plaintiff was employed as a Business Banking Officer for a certain time period  
 3 during her employment with Citibank. Defendants further admit that Plaintiff worked  
 4 out of more than one Citibank financial center at different times. Other than as  
 5 specifically admitted, Defendants deny the allegations contained in Paragraph 40.

6           41. With respect to Paragraph 41, Defendants lack sufficient information  
 7 and belief to admit or deny the allegations of Paragraph 41, and on that basis deny those  
 8 allegations..

9           42. With respect to Paragraph 42, Defendants admit that Citibank has  
 10 financial centers in numerous states including California and conducts business at those  
 11 financial centers and elsewhere. Defendants further admit that, for a portion of the  
 12 class period as defined by Plaintiff, Citibank employed Business Banking Officers.  
 13 Other than as specifically admitted, Defendants deny the allegations contained in  
 14 Paragraph 42. Defendants specifically deny that Citigroup ever employed Business  
 15 Banking Officers in the State of California or otherwise.

16           **COLLECTIVE/CLASS ACTION ALLEGATIONS**

17           43. With respect to Paragraph 43, Defendants admit that Plaintiff is  
 18 attempting to bring this action as a collective action and as a class action. Other than as  
 19 specifically admitted, Defendants deny the allegations contained in Paragraph 43.

20           44. With respect to Paragraph 44, Defendants deny the allegations  
 21 contained therein.

22           **Allegations Applicable To All Classes**

23           45. Based on the vague description provided by Plaintiff of the class,  
 24 specifically the "the functional equivalent however titled," Defendants lack sufficient  
 25 information and belief to admit or deny the allegations with respect to the number of  
 26 "class members," and on that basis deny those allegations. Defendants deny the  
 27 remaining allegations in Paragraph 45.

28           46. With respect to Paragraph 46, Defendants lack sufficient information

1 and belief to admit or deny the allegations of Paragraph 46, and on that basis deny those  
 2 allegations. Defendants deny that class action treatment in this case is appropriate.

3       47. With respect to Paragraph 47, Defendants deny the allegations  
 4 contained therein. Defendants deny that class action treatment in this case is  
 5 appropriate.

6       48. With respect to Paragraph 48, Defendants deny the allegations  
 7 contained therein. Defendants deny that class and/or collective action treatment in this  
 8 case is appropriate.

9       49. With respect to Paragraph 49, Defendants deny the allegations  
 10 contained therein. Defendants deny that class action treatment in this case is  
 11 appropriate.

12       50. With respect to Paragraph 50, Defendants deny the allegations  
 13 contained therein. Defendants deny that class action treatment in this case is  
 14 appropriate.

15                   Allegations Specific To The Nationwide Collective Class

16       51. With respect to Paragraph 51, Defendants admit that Plaintiff is  
 17 attempting to bring this action as a nationwide collective action. Other than as  
 18 specifically admitted, Defendants deny the allegations contained in Paragraph 51.  
 19 Defendants deny that collective action treatment in this case is appropriate.

20       52. With respect to Paragraph 52, Defendants lack sufficient information  
 21 and belief to admit or deny the allegations of Paragraph 52, and on that basis deny those  
 22 allegations. Defendants deny that collective action treatment in this case is appropriate.

23                   Allegations Specific To The California Class

24       53. With respect to Paragraph 53, Defendants admit that Plaintiff is  
 25 attempting to bring this action as a class action. Other than as specifically admitted,  
 26 Defendants deny the allegations contained in Paragraph 53. Defendants deny that class  
 27 action treatment in this case is appropriate.

28       54. With respect to Paragraph 54, Defendants deny the allegations

1 contained therein. Defendants deny that class action treatment in this case is  
 2 appropriate.

3 **COUNT ONE**

4 55. With respect to Paragraph 55, Defendants reallege and incorporate  
 5 their admissions and denials as set forth in Paragraphs 1 through 54.

6 56. With respect to the allegations in Paragraph 56, Defendants admit  
 7 that Plaintiff was employed by Defendant Citibank, and that Plaintiff's employment  
 8 with Defendant Citibank was governed by the FLSA. Defendants deny the remaining  
 9 allegations of Paragraph 56. Defendants specifically deny that Defendant Citigroup  
 10 employed Plaintiff or any Business Banking Officers.

11 57. With respect to the allegations in Paragraph 57, Defendants admit  
 12 that Plaintiff was employed by Defendant Citibank. Defendants specifically deny that  
 13 Defendant Citigroup employed Plaintiff or any Business Banking Officers. Defendants  
 14 deny that collective action treatment in this case is appropriate. Except as specifically  
 15 admitted or denied, Defendants lack sufficient information and belief to admit or deny  
 16 the remaining allegations in this paragraph, and on that basis deny those allegations.  
 17 Defendants deny that collective action treatment in this case is appropriate.

18 58. With respect to Paragraph 58, Defendant Citibank denies that  
 19 during any time period it was required to pay overtime to Business Banking Officers  
 20 that it refused to do so. Defendant Citigroup was never an employer of Plaintiff or any  
 21 Business Banking Officer. Defendants deny that collective action treatment in this case  
 22 is appropriate.

23 59. With respect to Paragraph 59, Defendants deny the allegations  
 24 contained therein. Defendants deny that collective action treatment in this case is  
 25 appropriate.

26 60. With respect to Paragraph 60, Defendants deny the allegations  
 27 contained therein. Defendants deny that collective action treatment in this case is  
 28 appropriate.

61. With respect to Paragraph 61, Defendants deny the allegations contained therein. Defendants deny that collective action treatment in this case is appropriate.

## COUNT TWO

62. With respect to Paragraph 62, Defendants reallege and incorporate their admissions and denials as set forth in Paragraphs 1 through 61.

63. With respect to Paragraph 63, Defendants deny the allegations contained therein. Defendants deny that collective action treatment in this case is appropriate.

64. With respect to Paragraph 64, Defendants deny the allegations contained therein. Defendants deny that collective action treatment in this case is appropriate.

65. With respect to Paragraph 65, Defendants deny the allegations contained therein. Defendants deny that collective action treatment in this case is appropriate.

66. With respect to Paragraph 66, Defendants deny the allegations contained therein. Defendants deny that collective action treatment in this case is appropriate.

### **COUNT THREE**

67. With respect to Paragraph 67, Defendants reallege and incorporate their admissions and denials as set forth in Paragraphs 1 through 66.

68. With respect to the allegations in Paragraph 68, the FLSA speaks for itself. Plaintiff's shorthand statement of its requirements is incomplete. Except as specifically admitted or denied, Defendants deny the remaining allegations contained in Paragraph 68.

69. With respect to Paragraph 69, Defendants deny the allegations contained therein. Defendants deny that class action treatment in this case is appropriate.

70. With respect to Paragraph 70, Defendants deny the allegations contained therein. Defendants deny that class action treatment in this case is appropriate.

71. With respect to Paragraph 71, Defendants deny the allegations contained therein. Defendants deny that class action treatment in this case is appropriate.

72. With respect to Paragraph 72, Defendants admit that Plaintiff is attempting to seek the relief set forth. Defendants deny that Plaintiff is entitled to such relief, or any relief whatsoever. Defendants deny that class action treatment in this case is appropriate.

## **COUNT FOUR**

73. With respect to Paragraph 73, Defendants reallege and incorporate their admissions and denials as set forth in Paragraphs 1 through 72.

74. With respect to the allegations in Paragraph 74, Defendants admit that non-exempt employees generally must receive minimum wage for all hours worked. Defendants specifically deny the remaining allegations of Paragraph 74.

75. With respect to Paragraph 75, Defendants deny the allegations contained therein. Defendants deny that class action treatment in this case is appropriate.

76. With respect to Paragraph 76, Defendants deny the allegations contained therein. Defendants deny that class action treatment in this case is appropriate.

77. With respect to Paragraph 77, Defendants deny the allegations contained therein. Defendants deny that class action treatment in this case is appropriate.

78. With respect to Paragraph 78, Defendants admit that Plaintiff seeks the relief set forth. Defendants deny that Plaintiff is entitled to such relief, or any relief whatsoever. Defendants deny that class action treatment in this case is appropriate.

## **COUNT FIVE**

79. With respect to Paragraph 79, Defendants reallege and incorporate their admissions and denials as set forth in Paragraphs 1 through 78.

80. With respect to Paragraph 80, the statutes, regulations and wage orders speak for themselves. Plaintiff's shorthand statement of their requirements is incomplete. Except as specifically admitted or denied, Defendants deny the allegations contained in Paragraph 80.

81. With respect to Paragraph 81, the statute speaks for itself. Plaintiff's shorthand statement of its requirements is incomplete. Except as specifically admitted or denied, Defendants deny the allegations contained in Paragraph 81.

82. Paragraph 82 assumes that Plaintiff and California Subclass A as defined in the Complaint are entitled to premium pay during the entire time period referenced in the Complaint, which Defendants deny, and on that basis deny the allegations in Paragraph 82. Defendants further deny that Citibank had a policy of refusing to pay premium pay to overtime-eligible employees.

83. With respect to Paragraph 83, Defendants deny the allegations contained therein. Defendants deny that class action treatment in this case is appropriate.

84. With respect to Paragraph 84, Defendants deny the allegations contained therein. Defendants deny that class action treatment in this case is appropriate.

85. With respect to Paragraph 85, Defendants admit that Plaintiff seeks the relief set forth. Defendants deny that Plaintiff is entitled to such relief, or any relief whatsoever. Defendants deny that class action treatment in this case is appropriate.

## COUNT SIX

86. With respect to Paragraph 86, Defendants reallege and incorporate their admissions and denials as set forth in Paragraphs 1 through 85.

87. With respect to Paragraph 87, the statute speaks for itself.

Plaintiff's shorthand statement of its requirements is incomplete. Except as specifically admitted or denied, Defendants deny the allegations contained in Paragraph 87.

88. With respect to Paragraph 88, Defendants deny the allegations contained therein. Defendants deny that class action treatment in this case is appropriate.

89. With respect to Paragraph 89, Defendants deny the allegations contained therein. Defendants deny that class action treatment in this case is appropriate.

90. With respect to Paragraph 90, Defendants deny the allegations contained therein. Defendants deny that class action treatment in this case is appropriate.

91. With respect to Paragraph 91, Defendants admit that Plaintiff seeks the relief set forth. Defendants deny that Plaintiff is entitled to such relief, or any relief whatsoever. Defendants deny that class action treatment in this case is appropriate.

## COUNT SEVEN

92. With respect to Paragraph 92, Defendants reallege and incorporate their admissions and denials as set forth in Paragraphs 1 through 91.

93. With respect to Paragraph 93, Defendants deny the allegations contained therein. Defendants deny that class action treatment in this case is appropriate.

## **COUNT EIGHT**

94. With respect to Paragraph 94, Defendants reallege and incorporate their admissions and denials as set forth in Paragraphs 1 through 93.

95. With respect to Paragraph 95, Defendants deny the allegations contained therein. Defendants deny that class action treatment in this case is appropriate.

## COUNT NINE

96. With respect to Paragraph 96, Defendants reallege and incorporate

their admissions and denials as set forth in Paragraphs 1 through 95.

97. With respect to Paragraph 80, the statutes and case law speak for themselves. Plaintiff's shorthand statement of their requirements is incomplete. Except as specifically admitted or denied, Defendants deny the allegations contained in Paragraph 97.

98. With respect to Paragraph 98, Defendants deny the allegations contained therein. Defendants deny that class action treatment in this case is appropriate.

99. With respect to Paragraph 98, Defendants deny the allegations contained therein. Defendants deny that class action treatment in this case is appropriate.

100. With respect to Paragraph 100, Defendants admit that Plaintiff seeks the relief set forth. Defendants deny that Plaintiff is entitled to such relief, or any relief whatsoever. Defendants deny that class action treatment in this case is appropriate.

## COUNT TEN

101. With respect to Paragraph 101, Defendants reallege and incorporate their admissions and denials as set forth in Paragraphs 1 through 100.

102. With respect to Paragraph 102, Defendants deny the allegations contained therein. Defendants deny that class action treatment in this case is appropriate.

## COUNT ELEVEN

103. With respect to Paragraph 103, Defendants reallege and incorporate their admissions and denials as set forth in Paragraphs 1 through 102.

104. With respect to Paragraph 104, Defendants deny the allegations contained therein. Defendants deny that class action treatment in this case is appropriate.

105. With respect to Paragraph 105, Defendants admit that Plaintiff

1 seeks the relief set forth. Defendants deny that Plaintiff is entitled to such relief, or any  
 2 relief whatsoever. Defendants deny that class action treatment in this case is  
 3 appropriate.

4 **COUNT TWELVE**

5 106. With respect to Paragraph 106, Defendants reallege and incorporate  
 6 their admissions and denials as set forth in Paragraphs 1 through 105.

7 107. With respect to Paragraph 107, Defendants deny the allegations  
 8 contained therein. Defendants deny that class action treatment in this case is  
 9 appropriate.

10 108. With respect to Paragraph 108, Defendants admit that Plaintiff  
 11 seeks the relief set forth. Defendants deny that Plaintiff is entitled to such relief, or any  
 12 relief whatsoever. Defendants deny that class action treatment in this case is  
 13 appropriate.

14 **ANSWER TO PRAYER FOR RELIEF**

15 109. Responding to the Prayer for Relief in the Complaint, Defendants  
 16 deny, that Plaintiff has been or will be damaged in the sums alleged, in any other sum,  
 17 or at all, by reason of any act or omission of Defendants. Defendants further deny, that  
 18 the elements of relief sought are available to Plaintiff on the particular claims alleged.  
 19 Defendants further deny that collective action or class action treatment or relief is  
 20 appropriate in this case.

21 **AFFIRMATIVE DEFENSES**

22 110. AS A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE  
 23 DEFENSE, Defendants allege that the Complaint, and each and every claim for relief  
 24 therein, fails to state a claim upon which relief may be granted.

25 111. AS A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE  
 26 DEFENSE, Defendants allege that the Complaint, and each cause of action therein, fails  
 27 to state facts sufficient to constitute a class or collective action against Defendants.

28 112. AS A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE

1 DEFENSE, Defendants allege that by reason of the conduct of Plaintiff, Plaintiff is  
 2 estopped to assert any right to relief.

3           113. FOR A FOURTH SEPARATE AND DISTINCT AFFIRMATIVE  
 4 DEFENSE, Defendants state that any act or omission giving rise to Plaintiffs' action  
 5 was in good faith and that they had reasonable grounds for believing that their acts or  
 6 omissions did not violate any statute, regulation and/or law.

7           114. FOR A FIFTH SEPARATE AND DISTINCT AFFIRMATIVE  
 8 DEFENSE, Defendants state that the damages for which Plaintiff seeks to hold  
 9 Defendants liable resulted in whole or in part from Plaintiff's acts or omissions, and  
 10 Defendants are in no way responsible for or liable to Plaintiff for her own wrongful or  
 11 negligent acts or omissions.

12           115. FOR A SIXTH SEPARATE AND DISTINCT AFFIRMATIVE  
 13 DEFENSE, Defendants state that the Complaint is barred, in whole or in part, because  
 14 Defendants' alleged practices as set forth in the Complaint are not "unlawful" within the  
 15 meaning of Business & Professions Code §§ 17200, et seq.

16           116. FOR A SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE  
 17 DEFENSE, Defendants state that the Complaint is barred, in whole or in part, because  
 18 Defendants' alleged practices as set forth in the Complaint are not "unfair" within the  
 19 meaning of Business & Professions Code §§ 17200, et seq.

20           117. FOR AN EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE  
 21 DEFENSE, Defendants state that the Complaint is barred, in whole or in part, because  
 22 Defendants' alleged practices as set forth in the Complaint are not "fraudulent" within  
 23 the meaning of Business & Professions Code §§ 17200, et seq.

24           118. FOR A NINTH SEPARATE AND DISTINCT AFFIRMATIVE  
 25 DEFENSE, Defendants state that Plaintiffs' claims are barred, in whole or in part, by  
 26 the applicable statutes of limitations, including but not limited to, California Code of  
 27 Civil Procedure sections 338(a), 339(1), and 340(a), California Business & Professions  
 28 Code section 17208, and 29 U.S.C. section 255(a).

1                   119. FOR A TENTH SEPARATE AND DISTINCT AFFIRMATIVE  
2 DEFENSE, Defendants state that Plaintiff is not entitled to any penalty award under  
3 Section 203 of the California Labor Code or liquidated damages under the FLSA since,  
4 at all times relevant and material herein, Defendants did not willfully fail to comply  
5 with any provisions of the FLSA, the California Labor Code or applicable wage orders,  
6 but rather acted in good faith and had reasonable grounds for believing that they did not  
7 violate the FLSA, the California Labor Code or applicable wage orders.

8                   120. FOR AN ELEVENTH SEPARATE AND DISTINCT AFFIRMATIVE  
9 DEFENSE, Defendants are informed and believe and thereon allege that by exercise of  
10 reasonable efforts, Plaintiff could have mitigated the amount of damages she allegedly  
11 suffered, but Plaintiff failed and/or refused and continues to fail and/or refuse, to  
12 exercise reasonable efforts to mitigate her alleged damages, if any.

13                  121. FOR A TWELFTH SEPARATE AND DISTINCT AFFIRMATIVE  
14 DEFENSE, Defendants state that the Complaint, and each and every cause of action  
15 alleged therein, is barred in whole or in part since, at certain times relevant and  
16 material herein, Plaintiff and other individuals in the putative class she seeks to  
17 represent were exempt from the overtime compensation requirements by virtue of one or  
18 more of the exemptions contained in the applicable federal and California wage and hour  
19 laws.

20                  122. FOR A THIRTEENTH SEPARATE AND DISTINCT AFFIRMATIVE  
21 DEFENSE, Defendants state that Plaintiff's claims, and the claims of each putative  
22 member of each purported subclass defined in the Complaint, are barred in whole or in  
23 part by the doctrine of laches.

24                  123. FOR A FOURTEENTH SEPARATE AND DISTINCT  
25 AFFIRMATIVE DEFENSE, Defendants state that Plaintiff's claims for injunctive relief  
26 are barred because Plaintiff has an adequate and complete remedy at law, and/or  
27 Plaintiff cannot make the requisite showing to obtain injunctive relief.

28                  124. FOR A FIFTEENTH SEPARATE AND DISTINCT AFFIRMATIVE

1 DEFENSE, Defendants state that the Complaint is not proper for treatment as a class  
 2 action or collective action; Plaintiff therefore lacks standing to represent the individuals  
 3 she purports to represent.

4                   125. FOR A SIXTEENTH SEPARATE AND DISTINCT AFFIRMATIVE  
 5 DEFENSE, Defendants state the FLSA preempts Plaintiff's State law causes of action in  
 6 that the application of California law to an alleged violation of the FLSA would  
 7 impermissibly frustrate and undermine the remedial framework adopted by Congress  
 8 for alleged violations of the FLSA. Specifically, *inter alia*, (i) Congress has mandated an  
 9 opt-in collective action procedure for claims under the FLSA, while Plaintiff seeks to  
 10 bring the claims on behalf of herself and the putative members of each purported  
 11 subclass defined in the Complaint as an opt-out class pursuant to Rule 23 of the Federal  
 12 Rules of Civil Procedure; and (ii) Congress has established a two-year statute of  
 13 limitations for violations of the FLSA, whereas Plaintiff seeks to apply a four-year  
 14 statute of limitations under the California Business and Professional Code, §§ 17200, *et*  
 15 *seq.*

16                   126. FOR A SEVENTEENTH SEPARATE AND DISTINCT  
 17 AFFIRMATIVE DEFENSE, Defendants state that Plaintiff's claims are barred in whole  
 18 or in part to the extent that Plaintiff was paid all money due.

19                   127. FOR AN EIGHTEENTH SEPARATE AND DISTINCT  
 20 AFFIRMATIVE DEFENSE, Defendants state that any alleged "off the clock" work by  
 21 Plaintiff was *de minimis* and thus not compensable under California or federal law.

22                   128. FOR A NINETEENTH SEPARATE AND DISTINCT AFFIRMATIVE  
 23 DEFENSE, Defendants state that the Complaint, and each claim for relief contained  
 24 therein, is barred because certain putative class members may have waived and/or  
 25 released some or all of the claims asserted in the Complaint.

26                   129. AS A TWENTIETH SEPARATE AND DISTINCT AFFIRMATIVE  
 27 DEFENSE, Defendants allege that the Court lacks jurisdiction over Plaintiff's claims to  
 28 the extent one or more of the parties have entered into an agreement to individually

1 arbitrate all employment related claims.

2 130. FOR A TWENTY-FIRST SEPARATE AND DISTINCT  
 3 AFFIRMATIVE DEFENSE, Defendants state that the Complaint is barred in its  
 4 entirety as to Defendant Citigroup because Citigroup did not employ Plaintiff or the  
 5 putative class she seeks to represent.

6 131. FOR A TWENTY-SECOND SEPARATE AND DISTINCT  
 7 AFFIRMATIVE DEFENSE, Defendants state that Defendants do not presently know all  
 8 of the facts and circumstances respecting Plaintiff's claims. Defendants reserve the  
 9 right to amend this Answer should they later discover facts demonstrating the existence  
 10 of additional affirmative defenses.

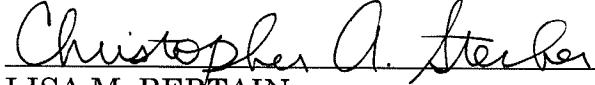
11

12 **PRAYER**

13 WHEREFORE, Defendants pray for judgment as follows:

14 1. That certification as a collective action under the FLSA be denied;  
 15 2. That class certification be denied;  
 16 3. That Plaintiff take nothing by reason of her Complaint;  
 17 4. That the Complaint be dismissed in its entirety with prejudice;  
 18 5. That judgment be entered for Defendants;  
 19 6. That Defendants be awarded their costs and reasonable attorneys'  
 20 fees according to proof; and  
 21 7. That Defendants be awarded such other relief as the Court may  
 22 deem just and proper.

23  
 24 DATED: June 24, 2008

  
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